

CONOCO, INC.

IBLA 82-653

Decided January 5, 1984

Appeal from decision of the Director, Geological Survey, affirming assessment of civil penalty under section 24(b) of the Outer Continental Shelf Lands Act. GS-23-Offshore O & G.

Reversed.

1. Outer Continental Shelf Lands Act: Generally

Under the civil penalty provision of sec. 24(b) of the Outer Continental Shelf Lands Act, notice of a violation and failure to correct the violation within such reasonable period of time as may be allowed is a prerequisite to liability.

APPEARANCES: J. Berry St. John, Jr., Esq., New Orleans, Louisiana, for appellant; Milo Mason, Esq., for Geological Survey.

OPINION BY ADMINISTRATIVE JUDGE GRANT

This appeal is brought by Conoco, Inc., from a decision of the Director, Geological Survey (Survey), 1/ affirming the assessment of civil penalties pursuant to section 24 of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. § 1350 (Supp. V 1981). Section 24(b) of OCSLA authorizes assessment of civil penalties for failure to comply with regulations or orders issued pursuant to the Act "after notice of such failure and expiration of any reasonable period allowed for corrective action."

The penalties were based on violations of Outer Continental Shelf (OCS) Order No. 7. 44 FR 76246 (Dec. 21, 1979). OCS Order No. 7 provides in pertinent part:

1.1.3 Curbs, Gutters, and Drains for Fixed Platforms or Structures and Mobile Drilling Units

1/ The decision was signed by the Acting Chief of the Conservation Division under a delegation of authority from the Director. Although responsibility for such matters has since been placed in the Minerals Management Service within the Department, the reference to Survey will be retained for the sake of clarity since the events below transpired at a time when Survey handled this matter.

a. Fixed Platforms or Structures. After the effective date of this Order, curbs, gutters, drip pans, and drains shall be installed in all deck areas in a manner necessary to collect all contaminants and piped to a properly designed, operated, and maintained sump system which will automatically maintain the oil at a level sufficient to prevent discharge of oil into OCS waters. * * *

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1.1.4 Discharges from Fixed Platforms or Structures and Mobile Drilling Units. Discharges from fixed platforms or structures and mobile drilling units, including sanitary waste, produced water, drilling mud, and deck drainage, are subject to the Environmental Protection Agency's permitting procedures, pursuant to the Federal Water Pollution Control Act, as amended.

* * * * *

2.2.1 Manned Facilities. Manned drilling and production facilities shall be inspected daily to determine if pollution is occurring. Maintenance or repairs which are necessary to prevent pollution of the ocean waters shall be undertaken and performed immediately.

The July 25, 1980, Survey memorandum from the District Supervisor, Houma District, to the Deputy Conservation Manager, Offshore Field Operations, provides the following background on the circumstances of the violation:

The drilling application for Lease OCS 0134 Well J-6, Grand Isle Block 48, had been approved and the rig Rowan III was being assembled on Platform "J" when the inspection was conducted. Upon arrival at the location the USGS representatives noticed an oil slick 5 yards wide and 2 miles long. Their investigation revealed that pollution was coming from the open-ended drain lines. All the drain lines on the "J" platform had been disconnected from the drain system going to the sump tank. This allowed diesel and oil from the pans to discharge to the Gulf waters through the open-ended drain lines.

Ordinarily, the use of drip pans properly installed under the drill floor and under the different motors will collect any oil and direct it through piping to a sump where it can be pumped into an atmospheric tank. Water from the sump pile is separated from the oil and then discharged.

The USGS representatives were told by Conoco's contract pumper that one of Conoco's lead maintenance operators had ordered him to disconnect the main drain pipe going to the sump. This had been done at midnight on May 6, 1980. Conoco's letter of May 9, 1980, substantiates what we were told.

Conoco provided the following explanation of the incident in its brief filed with the Director, Survey:

The platform was fitted with a viable drainage and closed sump system required by OCS order except that the drain line was then disconnected. In this regard, the platform is equipped with both a closed sump and an open sump. When drilling is conducted on the platform, it is necessary to switch the drain system from the closed sump to the open sump to prevent clogging of the system with drilling mud. The drain system had been disconnected from the closed sump but had inadvertently not yet been connected to the open sump at the time of the subject inspection.

A letter of December 2, 1980, from H. Glen Frizzell, the reviewing officer appointed by Survey to Conoco, advised appellant of the initiation of civil penalty proceedings as a consequence of the violation. Appellant requested a hearing before the reviewing officer as provided by regulation. 30 CFR 250.80-1. Subsequent to the hearing, the reviewing officer notified Conoco of his findings by letter of March 23, 1981. He found that two violations of OCS Order No. 7 occurred in that the drains were disconnected from the sump and that the operator disposed of oil into the waters of the Gulf of Mexico. The reviewing officer assessed a civil penalty of \$8,000 for the violations. The case is now before the Board on appeal from the Director's decision affirming the ruling of the reviewing officer.

Appellant argues in its statement of reasons for appeal that section 24(b) of OCSLA was misinterpreted below. Conoco contends that under the terms of the statute notice of a failure to comply with any OCS order or regulation and continued failure to comply after a reasonable opportunity to take corrective action is a prerequisite to liability for a civil penalty. In essence, appellant contends that it rectified the violation promptly upon discovery and should not be held liable. 2/

Counsel for Survey filed an answer to appellant's statement of reasons. It is contended that under the terms of section 24(b) the allowance of a grace period to correct a violation is discretionary rather than mandatory. Section 24(b) speaks in terms of "any reasonable period allowed for corrective action." Counsel argues that allowance of a mandatory grace period for cure of any violations would remove the incentive for compliance with regulations and orders issued under the statute until a violation was discovered by a Federal investigator since a period to cure would always be allowed prior to attachment of liability.

2/ Other issues were briefed by appellant and by the Solicitor. Among them is the question of whether the two violations charged actually constituted one violation of the statute. The issue of whether the regulation implementing the civil penalty provision was properly promulgated through the procedures required by the Administrative Procedure Act was also briefed. We need not reach these issues in light of our holding on the question of notice and opportunity to correct a violation which we find to be dispositive of this appeal.

Subsequent to the filing of briefs before the Board in this appeal, counsel for Survey requested a stay of administrative review proceedings on the ground that the same issue was the subject of litigation pending in the United States District Court for the Eastern District of Louisiana which would likely be dispositive of the present administrative appeal. Conoco did not oppose the stay and, hence, proceedings were stayed by order of the Board dated December 1, 1982. Thereafter, a motion to lift the stay was filed by appellant on the ground that the litigation had been resolved by decisions of the court. By order of September 14, 1983, this Board lifted the stay and allowed supplemental briefing in light of the judicial decisions. Although a brief has been filed on behalf of appellant, none has been submitted by the Solicitor.

[1] The court in Chevron U.S.A., Inc. v. Watt, Civ. No. 82-2840, slip op. at 8 (E.D. La. May 23, 1980), held that under the terms of section 24(b) an operator may be liable only for civil penalties assessed for violations which continue after the violator has been notified of the breach and has failed to correct it within any reasonable period allowed. In a related case, the court declared void and unenforceable the civil penalty regulation, 30 CFR 250.80-2(a)(1), upon which the Director relied in this case in affirming the liability of Conoco and rejecting appellant's contention that it was entitled to notice and a reasonable period of time to cure the violation prior to incurring liability. Conoco v. Watt, Civ. No. 82-3268 (E.D. La. June 7, 1983). ^{3/} Since neither the decision by the reviewing officer nor that by the Director, Survey, made a finding of what constituted a reasonable time for cure of the violations of OCS Order No. 7 or that the violations continued after lapse of a reasonable time, the decision imposing civil penalties must be reversed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

^{3/} The regulation at 30 CFR 250.80-2(a)(1) has since been rewritten in accordance with the judicial holdings. 48 FR 44777 (Sept. 30, 1983).

